

REMARKS

Claims 1-16 are pending. Claims 1-6, 8 and 13-16 have been rejected. Claims 7 and 9-12 have been allowed. Claim 1 has been amended to clarify the subject matter. The objection to the specification has been addressed. No new matter has been added. In view of the above amendments and the comments below, Applicants respectfully request withdrawal of the rejections and objections of the claims and allowance of the application.

Specification

The office action objected to the disclosure because of the following informalities: Applicants must provide the application number of the U.S. Patent Application being referenced on page 2 under "DETAILED DESCRIPTION" of the specification.

Applicants have amended the specification to include the application number. Applicants respectfully request withdrawal of this objection in light of the above amendment.

Claim Rejections – 35 USC §102

Claims 1-4, 6 and 8 have been rejected under 35 USC 102(b) as being anticipated by I et al. issued as U.S. Patent Number 5,734,646 ("the '646 patent").

Claim 1 has been amended to recite:

A method for determining when a request for higher transmission rate should be granted to a mobile station that has access to a communication system comprising the steps of:

calculating a first indicator using a second indicator, for all active connections;
establishing a blocking threshold;
deciding whether to grant or deny the mobile station access to use the requested higher transmission rate based on a comparison of the first indicator relative to the established threshold;
and
tracking the calculated indicator for a mobile station granted access to use the requested higher transmission rate.

The current invention is applicable in the situation where there is a delay between an initial rate estimation and a final rate estimation as well as between the time the rate decision is made and the time transmission actually starts. (See page 4, lines 8 to 19 of the current application) It is possible that a system may overestimate or underestimate the high data rate between the time that the rate is estimated and the time transmission actually occurs. To prevent this from happening, the invention is able to track the loading fraction for high data rate channels that have been assigned but are yet to start transmission as well as loading that will be released after some of the existing transmissions end. (See page 4, lines 20 to 23) As a result, the invention makes it possible to obtain a more accurate estimate of what the operational status of the system will be at the time the burst is going to start. (See page 4, lines 23 to 24)

Applicants respectfully submit that the '646 patent fails to teach or suggest the above bolded feature of the claimed invention for the following reasons.

For example, the office action cites the following passage at column 9, lines 4-13 in support of the rejection of claim 3:

If it is determined that the requesting mobile is to be permitted to transmit at the high rate, the base station may have to schedule the burst transmission. Since the load and interference situation may be time varying, the decision to permit is valid only for a period of time Q that depends on system

load, shadow fading dynamics, and user mobility. This time Q corresponds to L frame durations.

The base station *checks its list of scheduled bursts* and adds the requesting mobile to the list if it is shorter than L frames. (Emphasis Added)

In other words, the base station **checks a list of scheduled bursts** to determine whether the requesting mobile should be added to the list. It makes this determination based on whether the burst is shorter than L frames. It is clear that checking a list is not the same as checking a parameter or a calculated indicator. The purpose behind checking the list of bursts is to **schedule** the burst and not to determine if changes have occurred to a calculated indicator or a parameter. Therefore, although the process of the base station of the '646 patent includes **checking the list of bursts**, such a process is **not** equivalent to **tracking the calculated indicator** for a mobile station granted station granted access to use the requested higher transmission rate as recited in the claimed invention. Thus, claim 1 is not anticipated by the '646 patent for at least the above reasons.

In light of the above comments, Applicants respectfully submit that claim 1 and respective dependent claims 2-4, 6 and 8 are not anticipated by the '646 patent for at least the above reasons.

Claim Rejections – 35 USC §103

Claims 5 and 13 have been rejected under 35 USC 103(a) as being unpatentable over I et al. as applied to claims 1, 3 and 8 above, and further in view of Salonaho et al. (6,317,600). Claims 14, 15 and 16 have been rejected under 35 USC 103(a) as being unpatentable over I et al. as applied to claim 8 above, and further in view of Kotzin et al. (5,796,722)

As explained above, Applicants believe that the '646 patent fails to teach or suggest independent claim 1 of the present invention. Since dependent claims 5, 13, 14, 15 and 16 are dependent on claim 1, these dependent claims should be allowable for at least the same reasons as claim 1. In addition, none of the cited references, including Salonaho and Kotzin, or any combination thereof teach or suggest dependent claims 5, 13, 14, 15 and 16 or any claims of the present invention, for at least the same reasons mentioned above with respect to claim 1.

Request for Reconsideration pursuant to 37 CFR 1.111

Having filed a Petition to Revive the application and responded to each and every ground for objection and rejection in the Office Action mailed on October 9, 2003, Applicants request reconsideration in the instant application pursuant to 37 CFR 1.111 and request that the Examiner allow claims 1-16 and pass the application to issue. Please charge the fee petition to our Deposit Account No. 50-1561, and reference Attorney Docket Number 29633.010000. If there are any additional fees due, please charge any such fees to our Deposit Account No. 50-1561, and reference Attorney Docket Number listed above. If there is any point requiring further attention prior to allowance, the Examiner is asked to contact Applicants' counsel who can be reached at the telephone number listed below.

Respectfully,

Asif D. Gandhi,
Raafat E. Kamel,
Mathew Thomas,
Stanley Vitebsky, and
Carl F. Weaver

By Claude R. Narcisse
Claude R. Narcisse
Reg. No. 38979
(212) 801-3190

Date: November 23, 2004

\\ny2-srv01\744129v01